

No. 1-10-3488

STEVEN WALTERS, GAYLA WALTERS,)	Appeal from the Circuit Court
KATIE PETERSEN, JON PETERSEN, and)	of Cook County.
MATTHEW MORGAN,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 09 L 6151
)	
MICHAEL RODRIGUEZ, TRACY ANDREWS,)	
PAUL STANEK, and UNION PACIFIC)	
RAILROAD COMPANY,)	
)	
Defendants-Appellees.)	Honorable Jeffrey Lawrence, Judge Presiding.

JUSTICE MURPHY delivered the judgment of the court, with opinion.
Justices Neville and Salone concurred in the judgment and opinion.

OPINION

¶ 1 On July 22, 2004, plaintiff Steven Walters was driving his minivan across train tacks in Carlinville, Illinois, when it was struck by a train operated by defendant Union Pacific Railroad Company. Walters and his passengers sustained serious injuries from the impact. Walters was rendered paralyzed, Gayla Walters and Katie Petersen sustained serious injuries, and Molly Morgan and Jane Ann McGrath were killed. The passengers, and representatives of the deceased, sought damages in the United States District Court for the Central District of Illinois sounding in negligence. Following a jury trial, that cause of action resulted in a judgment for

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defendant on April 2, 2009.

¶ 2 Plaintiffs filed the instant action on May 26, 2009, in the circuit court of Cook County against defendants Michael Rodriguez, Tracy Andrews, Paul Stanek, and Union Pacific Railroad Company based on allegations of fraudulent concealment, negligent spoliation of evidence, intentional spoliation of evidence, civil conspiracy, and fraud against defendants. However, during the course of the prior litigation, plaintiffs brought numerous discovery motions before the federal court, including motions to compel discovery and for sanctions. The motions were all related to defendants' alleged spoliation and concealment of evidence and failure to timely produce vital evidence from electronic recorders concerning the operation of the signals at the grade crossing where plaintiffs' vehicle was struck. Plaintiffs' allegations and requests for leave to file claims of negligent and intentional spoliation and fraudulent concealment were rejected. Among the stated reasons for rejecting these claims, the federal court found that plaintiffs failed to: diligently pursue some of this discovery; show that the evidence sought was material; present evidence that defendants intentionally hid evidence; or show defendants intentionally destroyed evidence.

¶ 3 The court granted plaintiffs some relief, directing defendants to produce certain documents and evidence and awarding a monetary sanction for defendants' omission in disclosing certain evidence during discovery. Plaintiffs filed additional motions for additional oral discovery that were rejected and the matter proceeded to trial. Following entry of that judgment, plaintiffs did not move for reconsideration or appeal the ruling, but filed the instant complaint in the circuit court of Cook County on May 26, 2009.

¶ 4 Defendants moved for summary judgment on the instant complaint, arguing that the

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claims were barred by the doctrines of *res judicata* and collateral estoppel as well as the statute of limitations. Defendants also argued that the evidence did not support plaintiffs' claims and Illinois did not recognize the separate cause of action for intentional spoliation of evidence. On October 25, 2010, the trial court granted defendants' motion and this appeal followed. On appeal, plaintiffs repeat their arguments before the trial court that the doctrines of *res judicata* and collateral estoppel do not support summary judgment. In fact, outside of a new introduction and the removal of certain arguments not presented on appeal, plaintiffs' appellate brief is repeated verbatim from their memorandum of law in opposition to defendants' motion for summary judgment, which is helpfully included in the appendix to their brief.

¶ 5 We begin by addressing defendants' argument that plaintiffs' statement of facts should be disregarded for their failure to comply with our supreme court rules. We note that “ ‘[a] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.’ ” (Internal quotation marks omitted.) *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010) (quoting *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995)). Supreme Court Rules 341(h)(6) and (7) require a statement of the facts, with citation to the record, necessary for an understanding of the case and a clear statement of contentions with supporting citation of authorities and pages of the record relied on. Ill. S. Ct. Rs. 341(h)(6), (h)(7) (eff. July 1, 2008). These rules are not merely suggestions, but are necessary for the proper and efficient administration of the courts. *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 691-92 (1992).

¶ 6 We will not sift through the record or complete legal research to find support for this

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issue. The burden of a sufficient record falls on the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Issues that are ill-defined and insufficiently presented do not satisfy the rule and are considered waived. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007). In fact, for these violations, this court may not only strike portions of the brief or consider arguments waived, but strike a brief in its entirety and dismiss the matter. *Marengo*, 236 Ill. App. 3d at 692. Where the record is not complete, any doubts which might arise from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. Further, "the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005).

¶ 7 We agree with defendants that plaintiffs' recitation of the facts is wholly deficient and should be disregarded. As noted, plaintiffs have repeated the entirety of their recitation of facts and analysis concerning their arguments on *res judicata* and collateral estoppel from their memorandum below. Almost all citations to the record in their brief pertain to the federal court record and not the record before this court. Plaintiffs do repeat their footnote from their trial memorandum that explained to the trial court, and now this court, that the federal exhibits and docket entries can be produced, upon request by the court. As expressed in the case law above, it is not for this court to request a record and conduct research for the parties, but for the parties to prepare and submit a complete record and provide citation to the record and authority in support of its arguments.

¶ 8 Plaintiffs have completely failed to comply with Rule 341 by not only citing predominantly to the federal record, but by providing incorrect citations. Plaintiffs provided

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some citations to the record before this court in the introduction and conclusion of their facts and in some portions of their analysis. Unfortunately, the majority of these citations are to pages of the record unrelated to plaintiffs' statements and contentions. It is of further disappointment that we are also without the benefit of a reply brief to provide any explanation or discussion of this issue and defendants' analysis. Therefore, plaintiffs' facts are disregarded and the unsupported arguments are considered waived. Accordingly, we have not been presented any reason to overcome the presumption under *Foutch* and *Corral* that the trial court correctly ascertained the facts of the case and followed the law in granting defendants' motion to dismiss and we affirm that ruling.

¶ 9 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 10 Affirmed.

REPORTER OF DECISIONS – ILLINOIS APPELLATE COURT
(Front Sheet to be Attached to Each Case)

<p>Please Use Following Form:</p> <p>Complete TITLE of Case</p>	<p>STEVEN WALTERS, GAYLA WALTERS, KATIE PETERSEN, JON PETERSEN and MATTHEW MORGAN,</p> <p>Plaintiffs-Appellants,</p> <p>v.</p> <p>MICHAEL RODRIGUEZ, TRACY ANDREWS, PAUL STANEK and UNION PACIFIC RAILROAD COMPANY,</p> <p>Defendants-Appellees.</p>
<p>Docket No.</p> <p>COURT</p> <p>Opinion Filed</p>	<p>Nos. 1-10-3488</p> <p>Appellate Court of Illinois</p> <p>First District, THIRD Division</p> <p>November 9, 2011</p> <p>(Give month, day and year)</p>
<p>JUSTICES</p>	<p>JUSTICE MURPHY delivered the opinion of the court:</p> <p><u>Neville and Salone, JJ.,</u> concur [s]</p>
<p>APPEAL from the Circuit Ct. of Cook County, Criminal Div.</p>	<p>Lower Court and Trial Judge(s) in form indicated in the margin:</p> <p>The Honorable <u>Jeffrey Lawrence</u>, Judge Presiding.</p>
<p>For APPELLANTS, John Doe, of Chicago.</p> <p>For APPELLEES, Smith and Smith of Chicago, Joseph Brown, (of Counsel)</p> <p>Also add attorneys for third-party appellants or appellees.</p>	<p>Indicate if attorney represents APPELLANTS or APPELLEES and include attorneys of counsel. Indicate the word NONE if not represented.</p> <p>Attorneys for Plaintiffs-Appellants: Carl E. Kasten, Byron J. Sims Kasten, Ruyle, Sims & Bellm, P.C. 130 E. Main St., P.O. Box 587, Carlinville, IL 62626 Phone: (888) 308-7536</p> <p>and</p> <p>Sutter & Ori, LLC 155 N. Michigan Ave., Suite 400, Chicago, IL 60601 Phone: (312) 621-0000</p> <hr/> <p>Attorneys for Defefndants-Appellees: Raymond H. Groble, III, Brian George Daley Mohan Groble, PC 55 W. Monroe St., Suite 1600, Chicago, IL 60603 Phone: (312) 422-9999</p> <p>and</p> <p>Heath Hooks, Thomas E. Jones, Harlan Harla Thompson & Coburn LLP 525 W. Main St., Belleville, IL 62222 Phone: (618) 277-4700</p>

